

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

KENNETH HARTFIELD,

Petitioner,

vs.

Case No. 03-3191-JTM

CHARLES SIMMONS, et al.,

Respondents.

MEMORANDUM AND ORDER

Petitioner Kenneth Hartfield is a prisoner of the State of Kansas, incarcerated at El Dorado Correctional Facility, having previously been convicted of one count of aggravated kidnaping, two counts of aggravated criminal sodomy, and two counts of rape. Hartfield has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C.A. 2254 on the grounds that insufficient evidence was adduced at trial to support his convictions, that he was denied effective assistance of trial counsel, and that his constitutional rights were violated at trial by judicial and prosecutorial misconduct. After reviewing Hartfield's claims, the court will dismiss the appeal and not issue a writ of habeas corpus.¹

¹Also before the court is the petitioner's Motion to Amend (Dkt. No. 25), in which he seeks to submit a "First Amended Traverse" in addition to the "Traverse" previously submitted by petitioner in reply to the State's response brief. The Motion to Amend offers neither the slightest justification for requesting the amendment, nor any attempt to explain how the proposed Amended Traverse alters Hartfield's previous arguments. The requested relief will be denied. In any event, the court notes that neither the original Traverse nor the First Amended Traverse offers any valid basis for granting the relief

Facts

On May 14, 1997, Hartfield was charged in the District Court of Sedgwick County, Kansas, with one count of Aggravated Kidnaping in violation of K.S.A. 21-3421, two counts of Aggravated Criminal Sodomy in violation of K.S.A. 21-3506(a)(3)(A), and two counts of Rape in violation of K.S.A. 21-3502(1)(a). After being convicted on all counts by a jury, Hartfield was sentenced to 360 months in prison.

On direct appeal, Hartfield raised the following issues: (1) the trial court erred in permitting witnesses to testify to medical conclusions beyond their scope of knowledge and expertise; (2) there was insufficient evidence to support Hartfield's convictions; (3) the trial court erred in denying Hartfield's motion for acquittal because the victim recanted her accusations, leaving no evidence to support a conviction; (4) the trial court erred in permitting two child witnesses to testify, and in allowing their hearsay statements to be admitted through the testimony of a police detective; and (5) judicial misconduct deprived Hartfield of due process of law. Hartfield's convictions were affirmed by the Kansas Court of Appeals in November 1999. *State v. Hartfield*, No. 80,642 (unpublished opinion). A petition for review was denied by the Kansas Supreme Court on February 11, 2000.

Nearly one year later, Hartfield filed for post-conviction relief pursuant to K.S.A. 60-1507 (Case No. 01 C 3380), in which he raised the following issues: (1) Hartfield was denied due process of law; (2) the district court committed misconduct; (3) he was denied effective assistance of counsel; (4) his equal protection rights were violated. After the Sedgwick County District Court denied Hartfield's motion, the Kansas Court of Appeals affirmed the denial on July 3, 2003. Thereafter, the Kansas Supreme Court

sought.

denied Hartfield's petition for review on March 24, 2003. Currently, Hartfield is incarcerated at the El Dorado Correctional Facility and seeks federal habeas corpus relief on the grounds listed in the initial paragraph.

Hartfield and victim, C.K., were common-law husband and wife for ten years when the incident giving rise to the present proceedings took place. On March 25, 1997, Hartfield entered the residence he shared with C.K. after hearing from friends that C.K. had been inviting other men to the house while Hartfield was in jail. Upon entering, Hartfield locked C.K. in the residence and ordered C.K. into the bedroom, where Hartfield struck C.K. with a wooden post and forced her to undress. Hartfield forced C.K. to perform various sexual activities without C.K.'s consent, raping C.K. twice and sodomizing C.K. twice. The forced sexual activity between Hartfield and C.K. lasted for several hours and although C.K. attempted to make Hartfield stop, she generally complied with his demands out of fear for her safety. C.K.'s children were present in the house when the incident occurred, although they were not allowed in the bedroom at any point during the incident.

The morning after the incident, C.K. informed her mother and called the police to report the events. The responding officer visited the residence where the incident took place and spoke with two of C.K.'s children, ages five and seven, before seeing to it that C.K. was taken to the hospital for a sexual assault examination. At the hospital, C.K. told the examining nurse the same story of events she told both her mother and the police. The findings of the examining nurse, who discovered bruises on C.K.'s body, were confirmed by the director of the Sexual Assault Nurse Examiner/Sexual Assault Response Team at the hospital. A police detective interviewed C.K. at the hospital and she recited the same version of events to him. The same detective also interviewed C.K.'s five- and seven-year-old children, who told the

detective that Hartfield had yelled and cussed at C.K. and that the two had fought. The two children also told the detective that they heard bumps and bangs in the bedroom during the incident.

Several days later, C.K. contacted the detective and attempted to recant her entire story of the incident, stating that she told the lie because she was angry at Hartfield. At trial, C.K. again attempted to recant her entire story, but C.K.'s mother, the responding officer, the investigating detective, and the examining nurses all consistently testified about the story that C.K. had told them of being held in the bedroom of the residence and repeatedly assaulted physically and sexually. They also testified as to the physical evidence supporting C.K.'s initial story, and to the statements of the children that tended to corroborate it.

While Hartfield claims the sex was consensual, as noted earlier, the jury hearing the case convicted Hartfield on all counts.

Conclusions of Law

Hartfield comes before this court having exhausted his available state court remedies. In his memorandum of law in support of his claim based on 28 U.S.C.A. 2254, Hartfield sets out four claims in seeking to have this court reverse the case for an evidentiary hearing or a new trial. The claims are) first, that there was insufficient evidence used to sustain Hartfield's convictions; second that he was denied effective assistance of trial counsel; third, that judicial misconduct by the trial court prejudiced Hartfield; and fourth, that prosecutorial misconduct prejudiced Hartfield.

A. Sufficiency of the Evidence

When reviewing a claim of insufficient evidence to support a conviction in a federal habeas corpus proceeding, this court must be deferential to the findings of the state trial court. The controlling issue thus is “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Because Hartfield challenges both the state court’s fact findings and its application of the law to each of the crimes, this court is required to make two determinations as to each of the offenses with which Hartfield was charged. The first determination is whether the state court correctly identified the governing legal rule. The second determination is whether the state court reasonably applied the governing legal rule to the facts of Hartfield’s case.

On direct appeal, the Kansas Court of Appeals announced and applied essentially the same standard of review as set out by the Supreme Court in *Jackson*. In applying this standard, the Kansas Court of Appeals found that the testimony of the parties supporting C.K.’s initial story, along with the physical evidence and bodily injuries, supported C.K.’s initial story, and therefore, when viewed in the light most favorable to the prosecution, a rational fact finder could have found Hartfield guilty of all charges beyond a reasonable doubt. *State v. Hartfield*, No. 80,642, Slip op. At 3 (Kan. Ct. App., November 19, 2000) (Unpublished Opinion). This is true, even though there was conflicting evidence presented at trial. As the Kansas Court of Appeals appears to have correctly identified the governing legal rule as set forth in *Jackson*, this court must now apply Kansas state law regarding the substantive elements of each offense. *Torres v. Mullin*, 317 F.3d 1145, 1152 (10th Cir. 2003).

1. Aggravated Kidnaping

Under Kansas law, the elements of the offense of aggravated kidnaping are (1) the taking or confining of a person, (2) accomplishment by force, threat, or deception, (3) with the intent to hold such person to inflict bodily injury or to terrorize the victim, and (4) the infliction of bodily harm on the person kidnaped. K.S.A. 21-3420(c) (1995); K.S.A. 21-3421 (1995). The trial court correctly instructed the jury as to the elements of this crime. (Jury Instruction 6).

At trial, the State presented testimony that Hartfield forced C.K. into the bedroom and would not allow her to leave, and that he did so with force and with an intent to inflict physical harm and to sexually assault her, and that Hartfield actually inflicted several injuries on C.K. Thus, testimony at trial supports a finding that the elements of aggravated kidnaping were met. While Hartfield cites in his petition the existence of conflicting evidence supporting a finding that Hartfield did not kidnap C.K., the purview of the reviewing court is not to weigh conflicting evidence or assess the credibility of witnesses. *Grubbs v. Hannigan*, 982 F.2d 1483, 1487 (10th Cir. 1993). This court, as a federal habeas court, must presume “that the trier of fact resolved any such conflicts (in evidence) in favor of the prosecution, and must defer to that resolution.” *Jackson*, 443 U.S. at 326. Resolving the conflicting testimony in favor of the prosecution and viewing the testimony of C.K.’s mother, the police officer and detective, and the examining nurses, along with the physical evidence presented at trial, it is reasonable to conclude that there was sufficient evidence to support a conviction for aggravated kidnaping. On review, this court should find that a rational fact finder could have found the essential elements of aggravated kidnaping beyond a reasonable doubt.

2. Rape (2 counts)

Under Kansas law, the elements of rape are (1) that Hartfield had sexual intercourse with the victim, (2) that the victim did not consent to the intercourse, and (3) that the victim was overcome by force or fear. K.S.A. 21-3502(a)(1)(A) (Supp. 2003). “Sexual intercourse” is defined in K.S.A. 21-3501 (1995) as “any penetration of the female sex organ by a finger, the male sex organ or any object.” The trial court correctly instructed the jury as to the elements of rape. (Jury Instructions 8 & 10).

A jury convicted Hartfield on two counts of rape. The first count resulted from Hartfield’s rape of C.K. with his penis and the second count resulted from Hartfield’s rape of C.K. with his hand. The two instances of rape represent separate and independent instances of rape, although they occurred during the course of the same incident on March 25, 1997.

Similar to the analysis in the above paragraph dealing with the kidnaping charge, the testimony presented at trial and the evidence of physical injuries to C.K.’s vaginal area support a finding that any rational trier of fact could have found the three essential elements of rape beyond a reasonable doubt as to both counts of rape. While there was conflicting testimony, the jury is free to weigh the evidence and make a determination as to which evidence most accurately portrays the actual events. Although C.K. recanted her story of the events of March 25, 1997, this court, as a federal habeas court, must presume the trier of fact (in this case, the jury) resolved the facts in favor of the prosecution. On review, this court finds that a rational fact finder could have found the essential elements of rape beyond a reasonable doubt.

3. Aggravated Criminal Sodomy (2 counts)

Under Kansas law, the elements of aggravated criminal sodomy are (1) that Hartfield engaged in sodomy with the victim, (2) that the victim did not consent to the sodomy, and (3) that the victim was overcome by force or fear. K.S.A. 21-3506(a)(3)(A) (1995). K.S.A. 21-3501(2) (1995) defines criminal sodomy as “oral contact of the male genitalia; anal penetration, however slight, of a male or female by any body part or object.” The trial court correctly instructed the jury as to the elements of this crime. (Jury Instructions 7 and 9).

A jury convicted Hartfield on two counts of aggravated criminal sodomy. The first count resulted from Hartfield forcing C.K. to administer oral sex and the second count resulted from Hartfield’s anal rape of C.K. The two instances of aggravated criminal sodomy represent separate and independent instances of the offense, although they occurred during the course of the same incident on March 25, 1997.

Similar to the analysis in the above paragraphs dealing with the kidnaping offense and rape offenses, the testimony presented at trial and the evidence of physical injuries to C.K.’s person support a finding that any rational trier of fact could have found the three essential elements of aggravated criminal sodomy beyond a reasonable doubt as to both counts of the offense. While there was conflicting testimony, the jury is free to weigh the evidence and make a determination as to which evidence most accurately portrays the actual events. Although C.K. recanted her story of the events of March 25, 1997, this court, as a federal habeas court, must presume the trier of fact (in this case, the jury) resolved the facts in favor of the prosecution. On review, this court finds that a rational fact finder could have found the essential elements of aggravated criminal sodomy beyond a reasonable doubt.

B. Effective Assistance of Trial Counsel

For Hartfield to establish a claim of ineffective assistance of trial counsel, he must show (1) that his trial counsel's performance fell below an objective standard of reasonableness, and (2) that the deficient performance prejudiced his case. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). This court should be highly deferential to the trial counsel's perspective at the time of the trial. Likewise, this court should avoid analyzing the trial counsel's performance with the court's 20/20 vision of hindsight.

Hartfield's claim that he was denied effective assistance of trial counsel stems from seven distinct allegations. First, Hartfield asserts that his trial counsel failed to introduce pictures into evidence regarding the residence. Second, Hartfield asserts that his trial counsel failed to call C.K. back to the witness stand for further cross examination, Third, Hartfield asserts that his trial counsel failed to call expert witnesses to prove C.K. had no bruises. Fourth, Hartfield asserts that his trial counsel allowed the police officers who testified to knowingly offer perjured testimony. Fifth, Hartfield asserts that his trial counsel allowed the State's expert witness to give prejudicial testimony. Sixth, Hartfield asserts that his trial counsel knowingly permitted the police detective to knowingly introduce perjured testimony to the court and jury. This allegedly perjured testimony apparently concerned Hartfield's locking of C.K. in the residence. Seventh, Hartfield asserts that his trial counsel failed to object and move for mistrial where the court would not stop making misleading statements and misstatements about important trial procedures, thus depriving Hartfield of due process of law.

During the course of a trial, attorneys develop and implement a trial strategy. The trial strategy of Hartfield's counsel can explain why the counsel did or did not object at certain points in the trial, as well as explain why the trial counsel did not present certain evidence or call certain witnesses. All of Hartfield's

allegations are unsupported by evidence. There is no evidence of perjured testimony. As the State points out, even if the evidence was perjured, Hartfield fails to establish that his trial counsel knew that the testimony being offered was perjured. Hartfield fails to establish any judicial or prosecutorial misconduct to which his counsel could have objected. Ultimately, Hartfield fails to demonstrate any error or objectively unreasonable action or inaction on the part of his trial counsel. Just as the Kansas Court of Appeals, applying the appropriate standard of review from *Strickland*, found that Hartfield was not denied effective assistance of counsel, this court makes the same finding.

C. Judicial or Prosecutorial Misconduct

As the State points out, a federal court may not review a claim of judicial misconduct if the state court decision rests on a state law ground that is (1) independent of the federal question and (2) adequate to support it. *Coleman v. Thompson*, 501 U.S. 722, 729-30 (1991). This rule applies whether the state law ground is substantive or procedural. *Id.* at 729. A state rule “is independent if it relies on state law rather than federal law and is adequate if it is regularly followed and applied evenhandedly.” *Zimmer v. McKlune*, 87 F.Supp.2d 1153, 1158 (D. Kan. 2000).

In Kansas, the law is that “[i]ssues not raised before the trial court cannot be raised on appeal.” *State v. Hartfield*, No. 80,642, Slip op. At 5-6 (Kan. Ct. App. November 19, 1999). On Hartfield’s direct appeal, the Kansas Court of Appeals followed this rule in finding that because Hartfield failed to object to the alleged misconduct at trial, he failed to preserve the issue for appeal. *Id.* Thus, the issue was denied by the state courts on the grounds of an independent and adequate state procedural bar.

This court may not review Hartfield's claims of prosecutorial or judicial misconduct unless Hartfield is able to (1) show cause for his default and actual prejudice as a result of the alleged violation of federal law, or (2) demonstrate that this court's failure to consider the claim will result in a fundamental miscarriage of justice. *Murray v. Carrier*, 477 U.S. 478, 488-89, 496 (1986).

According to the Supreme Court in *Coleman*, "cause" under the first test must be something external to a petitioner. While Hartfield personally lacked the requisite knowledge to object before the trial court, this would be considered an internal reason for the default and does not meet the test. From Hartfield's somewhat incoherent pleadings, there appears to be no external cause for his failure to object. As such, the first part of the first test is not met. Likewise, Hartfield does not appear to have been prejudiced by either judicial or prosecutorial misconduct. Because neither of the parts of the first test are met, this court finds Hartfield failed to overcome procedural default.

The second test requires Hartfield to show that it would be a miscarriage of justice for this court to deny jurisdiction. *Carrier*, 477 U.S. at 496. A miscarriage of justice is shown when the error complained of probably resulted in the conviction of an innocent person. *Gonzalez v. Sullivan*, 934 F.2d 419, 422 (2d Cir. 1991). While there is conflicting evidence in the present case, there is sufficient evidence for a reasonable jury to have found Hartfield guilty of rape, aggravated sodomy, and aggravated kidnapping. Given Hartfield's lack of credible evidence proving there was perjured testimony, this court finds that Hartfield's claims as to judicial and prosecutorial misconduct have been defaulted and no relief on these issues should be granted.

IV. Conclusion

Hartfield has failed to demonstrate that there were constitutional errors in the state court proceedings that would place his convictions in question. The Kansas Court of Appeals did not err in finding that the trial court correctly identified and reasonably applied the governing rule in each of Hartfield's offenses to the facts of the case. No evidentiary hearing is warranted, since the state court records are available, enabling this court to make an independent factual finding. This court will dismiss Hartfield's appeal and will not issue a writ of habeas corpus.

IT IS ACCORDINGLY ORDERED this 3d day of September, 2004, that Hartfield's Petition for Relief (Dkt. No. 1) is hereby denied.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE